

BEFORE THE
ILLINOIS COMMERCE COMMISSION

THE DEPARTMENT OF TRANSPORTATION) DOCKET NO.
OF THE STATE OF ILLINOIS, for and) T09-0015
on behalf of the People of the)
State of Illinois,)
Petitioner,)
v.)
THE KANSAS CITY SOUTHERN RAILROAD)
COMPANY,)
Respondent.)
)
Petition to reconstruct (widening)
and channelization) an at-grade)
crossing at the intersection of)
Illinois Route 111 (Montclair)
Avenue) which traverses the single)
mainline track of the Company)
(DOT/AAR No. 294 530B) in the City)
of Godfrey in Madison County,)
Illinois.)

Springfield, Illinois
Thursday, March 12, 2009

Met, pursuant to notice, at 10:00 a.m.

BEFORE :

MR. DEAN JACKSON, Administrative Law Judge

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Lic. #084-002710

1	<u>I N D E X</u>				
2					
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	KIRK BROWN				
5	By Mr. Parrish	7		21	
6	By Mr. Jeffery		13		22
7	By Mr. Von De Bur		20		26
8	JAMES MORRIS				
9	By Mr. Parrish	27			
10					
11					
12					
13					
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1 Illinois 62701, phone number (217) 557-1286.

2 JUDGE JACKSON: Thank you. Okay. The petition
3 states that there is a project going on down in
4 Madison County, Godfrey, Illinois, Route 111 U.S.
5 67. The petition says that there was a verbal
6 agreement on it and they are waiting for KCS to
7 execute it.

8 Mr. Jeffery, what's going on?

9 MR. JEFFERY: We have received an agreement
10 from -- a draft agreement from Kirk on January 12 and
11 last week we did provide comments back. His draft
12 was missing two exhibits and he provided that to us
13 just a couple of days ago. So I think the wheels are
14 winding their course here.

15 JUDGE JACKSON: Okay. Does the KCS have a
16 problem with anything? I mean, in the agreement is
17 there something that's going to break it, break the
18 agreement?

19 MR. JEFFERY: No, there were just some
20 provisions, I think, concerning the scope of the
21 indemnity and some other issues. I am waiting for my
22 client to review the two attachments that IDOT

1 provided, and I have not -- I have yet to hear back
2 from them concerning that. But separate and apart
3 from the agreement, I think just from a pure
4 engineering perspective, I don't think we have any
5 engineering issues with their proposed design or
6 project.

7 JUDGE JACKSON: All right. Mr. Parrish, this
8 is a fiscal year 2009 letting?

9 MR. PARRISH: That is correct, Judge.

10 JUDGE JACKSON: Do you want any testimony
11 today? Do you need any?

12 MR. PARRISH: I believe we do, Judge, because
13 time is of the essence. The issue is that originally
14 the agreement was sent to -- back in, I believe it
15 was, August of '08 so that we heard -- you know, we
16 were looking at it before. And I would just want all
17 the parties to understand that there is a bit of an
18 urgency associated with this so that we don't lose
19 funding. This is a project that is federally funded,
20 and we don't want to lose that money because we
21 missed the letting.

22 JUDGE JACKSON: How much?

1 MR. BROWN: 6.7 million.

2 JUDGE JACKSON: Do you have a witness?

3 MR. PARRISH: Yes, I do, Judge. As a matter of
4 fact, we have two. And the first witness is going to
5 be Mr. Kirk Brown.

6 JUDGE JACKSON: And the second witness?

7 MR. PARRISH: And the second witness is going
8 to be Mr. James Morris.

9 (Whereupon the witnesses were
10 duly sworn by Judge Jackson.)

11 KIRK BROWN
12 called as a witness on behalf of the Illinois
13 Department of Transportation, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PARRISH:

17 Q. Mr. Brown, would you please state your name
18 for the record.

19 A. My name is Kirk Brown.

20 Q. And where do you work and what is your job
21 title?

22 A. I work for the Illinois Department of

1 Transportation, District 8, Collinsville, and my
2 title is Project Support Engineer.

3 Q. And please provide your educational
4 background and include any professional degrees you
5 hold.

6 A. I have a Bachelor of Science in civil
7 engineering from Southern University, Baton Rouge,
8 Louisiana.

9 Q. And what are your job responsibilities with
10 IDOT?

11 A. I supervise the project support section
12 which includes railroads, utilities and local agency
13 agreements.

14 Q. And as part of those job responsibilities
15 are you familiar with the petition that was filed by
16 IDOT that is the subject of today's hearing?

17 A. I am.

18 Q. And what is your role in terms of the
19 project described in the petition?

20 A. To coordinate between the railroad and the
21 IDOT designers to make sure that both parties have
22 their engineering needs met, and that any agreement

1 that needs to take place regarding our work on or
2 adjacent to railroad properties is addressed.

3 Q. And can you briefly describe for the court
4 this project?

5 A. This project includes the widening of
6 Illinois Route 111 in Godfrey from a two-lane section
7 as it currently is to a four-lane section. It also
8 includes dual bridges over existing Illinois 111
9 which will be part of proposed Illinois 255. That
10 also includes channelization which is we are putting
11 in a raised median in the existing middle of the
12 pavement.

13 Q. And I show you what's been marked --
14 counsel, these are exhibits that are attached to the
15 petition, filed with the petition. I show you what's
16 been marked Petitioner's Group 1 exhibit and it
17 consists of four separate drawings. Do you recognize
18 those drawings?

19 (Whereupon IDOT Group Exhibit 1
20 was presented for purposes of
21 identification as of this date.)

22 A. I do.

1 Q. Are those drawings associated with this
2 project?

3 A. Yes, they are.

4 Q. Can you briefly describe what those
5 drawings represent?

6 A. The first drawing is a cover sheet of the
7 plans as approved. The second sheet is the railroad
8 crossing detail focusing strictly on the crossing of
9 the Route 111 with the KCS tracks. And the third and
10 fourth are the plan views of the project including
11 the crossing with KCS.

12 Q. And is the construction project important
13 to the state and its citizens?

14 A. It is, yes.

15 Q. What is the current estimate of how long
16 this project is going to take once construction
17 begins?

18 A. I believe the current estimate is two
19 construction seasons.

20 Q. And what is the current estimate of how
21 long this construction project will take?

22 A. It will take two construction seasons. It

1 will vary depending on factors once it gets to
2 construction, but it is targeted for two construction
3 seasons.

4 Q. And the total cost of the project is
5 estimated to be what?

6 A. Approximately 6.7 million between the two
7 sections combined, the bridges plus the roadway
8 widening.

9 Q. There was a -- there have been discussions,
10 have there not, back and forth between IDOT and
11 Respondent, the Kansas City Southern Railroad,
12 regarding this?

13 A. Yes, there have.

14 Q. And has IDOT submitted an agreement to
15 Kansas City Railroad regarding this?

16 A. Yes, we have.

17 Q. Per the agreement what entity is
18 responsible for payment of most of the costs of this?

19 A. IDOT is.

20 Q. What is the funding source of this project?

21 A. The funding source is federal funds.

22 Q. Are there any time constraints associated

1 with this funding?

2 A. Yes, there is.

3 Q. And what are those time constraints?

4 A. This project must be on at the latest -- it
5 must be let by our June letting at the latest to
6 retain that funding. We have already had it on a
7 March letting which we have missed, so it's been
8 pushed back while awaiting completion of the
9 agreement.

10 Q. And as far as you know has Kansas City
11 Southern expressed any objections to the project?

12 A. No. I would add we have, throughout the
13 coordination, we have received comments on the
14 engineering aspects of the project. All those have
15 been addressed and included in the plans, and there
16 are no other issues remaining.

17 Q. If there are no -- if there is no
18 opposition to the project, why haven't the parties
19 executed an agreement as far as you know?

20 A. I cannot answer that. I don't know.

21 Q. Is it your recommendation that the
22 Commission require Kansas City Southern Railroad to

1 execute and comply with the terms and conditions of
2 the agreement as part of the Commission's overall
3 approval of the project?

4 A. It is, yes.

5 MR. PARRISH: I have no further questions.

6 JUDGE JACKSON: Mr. Jeffery?

7 MR. JEFFERY: Yes, thank you. I would like to
8 have the record show I am handing the witness what's
9 marked as -- I had these pre-marked as Exhibit 1. I
10 don't know if it should be KCS 1 or what your
11 protocol is.

12 JUDGE JACKSON: Sure, KCS 1 is fine.

13 (Whereupon KCS Exhibit 1 was
14 presented for purposes of
15 identification as of this date.)

16 CROSS EXAMINATION

17 BY MR. JEFFERY:

18 Q. Mr. Brown, can you identify what's labeled
19 as KCS Exhibit 1?

20 A. Yes, this is an e-mail from myself to Steve
21 Jeffery.

22 Q. Which is myself?

1 A. Yes.

2 Q. What's the date on that?

3 A. The date is January 12, 2009.

4 Q. And your e-mail forwarded another e-mail?

5 A. Yes, it did.

6 Q. Whose is the initial e-mail?

7 A. From Jim Morris to David Reeves.

8 Q. And who is Jim Morris?

9 A. Jim Morris is the project support engineer

10 for the central office.

11 Q. And he is sitting right here with us today

12 as well?

13 A. Yes.

14 Q. Could you read, what does the text say of

15 his message to you?

16 A. "David, attached is the agreement and

17 estimate. I did not send our ethical statement or

18 the two plan sheets. Thanks for your assistance,

19 Jim."

20 Q. And what did your e-mail to me say?

21 A. Actually, "I am forwarding an e-mail to you

22 from," and it was addressed to Srikanth Honnur with

1 KCS. It says, "Sri, as we discussed at the 1/7/09
2 meeting attached is a copy of the e-mail regarding
3 the Illinois 111 at-grade crossing in Godfrey. Jim
4 is in our central offices and began checking with Dave
5 Reeves, KCS legal counsel, for updates on the
6 agreement when we didn't hear back from Mike VanTiem.
7 More e-mails to follow."

8 Q. And that was the text of your message to
9 me?

10 A. Yes. It appears that I forwarded my
11 message from Sri to you to update you on where we
12 stood.

13 Q. And this was again on January 12?

14 A. Yes.

15 Q. Was this in follow-up to a meeting which
16 occurred between IDOT and KCS?

17 A. It was.

18 Q. When did that meeting take place?

19 A. On January 7.

20 Q. And that took place at the?

21 A. At the IDOT Collinsville office, yes.

22 Q. Were you present at the meeting?

1 A. I was.

2 Q. Who all from KCS was present at that
3 meeting, do you recall?

4 A. You were there, Steve Jeffrey; Bill Reeves
5 was there for Design Nine, also representing KCS;
6 Paul Fetterman. I don't recall which -- he was there
7 on behalf of KCS, but I don't recall which consultant
8 he was representing. And I believe there was one
9 more.

10 Q. Would it be fair to say at that meeting on
11 January 7 coordination concerning this Route 111
12 project and agreement was one of the topics of
13 conversation?

14 A. Yes.

15 Q. And would it also be fair to say that you
16 arranged that meeting in response to a request from
17 KCS?

18 A. I did. It was on a separate project, the
19 project that we are set to discuss later this
20 afternoon. But once we got there, I believe that we
21 also decided that we wanted to address the 111
22 project.

1 Q. But my point being, the meeting was
2 requested by KCS to facilitate coordination of
3 projects with IDOT?

4 A. I believe so. I don't recall specifically
5 that they requested the meeting, but it was an
6 agreeable meeting.

7 Q. Would it also be fair to say that within
8 the past week KCS has provided comments concerning
9 your draft agreement?

10 A. KCS has provided those comments within the
11 past -- last Friday, I believe, is when the comments
12 were received.

13 Q. And you acknowledged receipt of that in an
14 e-mail to me, correct?

15 A. I did, yes.

16 Q. And would it also be fair to say that,
17 contained within the comments that KCS made, there
18 was a notation that there were two exhibits or I
19 think one was labeled Exhibit A and another was
20 labeled Attachment A to your draft agreement, had not
21 been provided to KCS for review?

22 A. That is incorrect or inaccurate, I should

1 say. Those Exhibit A and Attachment A were both
2 included in the original agreement which was
3 submitted to Mike VanTiem, with the project engineer,
4 as we have been informed that that's his role. So
5 when the initial agreement went out, those
6 attachments were included and it was sent back on
7 August 28 of 2008.

8 Now, the e-mail attachment did not
9 include those exhibits, but they were provided once
10 we were informed that they weren't attached.

11 Q. And it would also be fair to say that just
12 within the last couple two or three days you did
13 forward those two, Exhibit A and the Attachment A...

14 A. As follow-up to the e-mails.

15 Q. ..to me for KCS review?

16 A. I did.

17 Q. So at this point what's your understanding
18 of really whose court the ball is in concerning this
19 negotiation of the agreement?

20 A. At this point we received the comments late
21 Friday afternoon. I have reviewed the proposed
22 changes to the agreement. We are also circulating

1 them to some of the other sections within both our
2 district and also central office to make sure that no
3 one has any objections to the changes.

4 The changes weren't -- I think that if
5 you had to scan it, I had sent you a PDF file and you
6 were able to convert it, but the form that I had
7 didn't have the changes marked up. So we had to scan
8 it and compare with the original by actually reading
9 it, looking at one copy and the other.

10 So, and I pointed out those changes,
11 all of them that I could find, to everyone who has to
12 review it. And when I get those comments back, we
13 will return that.

14 Q. Do you have -- when do you expect IDOT to
15 respond to those comments?

16 A. I think very shortly. I only know of one
17 other person within the central office who has to
18 look at it. And when I get those comments back, we
19 will be able to respond.

20 Q. And if the parties were to enter into such
21 an agreement, would that moot the necessity for a
22 hearing like this?

1 A. I believe so, yes.

2 MR. JEFFERY: I have no other questions.

3 JUDGE JACKSON: Thank you.

4 MR. JEFFERY: I would offer at this point KCS

5 Exhibit 1.

6 JUDGE JACKSON: All right. Any objections?

7 MR. PARRISH: Without objection.

8 JUDGE JACKSON: Does Staff have any objection?

9 MR. VON DE BUR: No objection.

10 JUDGE JACKSON: It will be admitted.

11 (Whereupon KCS Exhibit 1 was

12 admitted into evidence.)

13 Mr. Von De Bur, any questions?

14 MR. VON DE BUR: Just a couple.

15 CROSS EXAMINATION

16 BY MR. VON DE BUR:

17 Q. You have stated that the Illinois 111 work

18 consisted of a roadway widening?

19 A. Yes, it does.

20 Q. And can you just describe particularly

21 what's going on at the crossing itself?

22 A. At the crossing existing there is not a --

1 existing there is a two-lane roadway going across the
2 KCS tracks. We are going to widen and add a central
3 median. They are widening the crossing out to, I
4 believe it was, 96 feet or so. So that's going to
5 involve moving KCS's signals, their gate arm
6 equipment. So a lot of the roadway, the railroad
7 facilities, will have to be moved away from their
8 existing location.

9 Q. Any modifications to that and relocation of
10 their circuitry and signals will be paid for by who?

11 A. By the State of Illinois, by IDOT.

12 Q. And they have the option of reviewing those
13 plans also?

14 A. They do.

15 MR. VON DE BUR: That's all I have, Your Honor.
16 Thank you.

17 JUDGE JACKSON: Thank you. Any follow-up?

18 MR. PARRISH: Just a couple on redirect, Judge.

19 REDIRECT EXAMINATION

20 BY MR. PARRISH:

21 Q. Yes. When was the original agreement sent
22 to Kansas City Southern Railroad?

1 A. On or about August 28, 2008.

2 Q. And between the time of the transmission of
3 that original agreement in August of 2008 and the
4 time of filing of this petition which was -- if you
5 will pardon me for a second, Judge?

6 JUDGE JACKSON: No, that's fine.

7 Q. February 6, I believe, had there been any
8 response from Kansas City Southern Railroad to the
9 agreement as far as you know?

10 A. Not to my knowledge.

11 MR. PARRISH: Okay, I have no further
12 questions.

13 JUDGE JACKSON: Thank you.

14 RECROSS EXAMINATION

15 BY MR. JEFFERY:

16 Q. But the agreement was discussed at our
17 coordination meeting on January 7?

18 A. The agreement was discussed, yes. That was
19 not the intent of the meeting. That was not the
20 project that we met to discuss, but it was discussed.

21 Q. It was discussed as a follow-up?

22 A. Yes.

1 Q. And that's what prompted you to send
2 another copy of it to me for review by KCS, correct?

3 A. Yes, because we didn't get any response
4 back to the agreement.

5 Q. You have a copy, I believe it is one of
6 your exhibits attached to the petition, of your
7 initial transmittal letter to Mike VanTiem. Do you
8 have a copy of that? I believe it is one of the IDOT
9 exhibits attached to your petition.

10 A. Actually, is this the letter you are
11 referring to, the cover letter for the agreement?

12 Q. Yes. It is marked as Exhibit 2 to the IDOT
13 petition. I would like to refer your attention to
14 that. Do you have a copy of that? That's a letter
15 dated August 28, 2008, signed by Cheryl Cathey, Chief
16 of Preliminary Engineering?

17 A. Yes.

18 Q. And that was directed to a Mr. Mike
19 VanTiem?

20 A. Yes.

21 Q. Do you know Mr. VanTiem?

22 A. I do not.

1 Q. Do you know what his role and
2 responsibilities are for KCS?

3 A. I only know that he is the project engineer
4 and that it is his responsibility to review and
5 approve the plans and to facilitate the approval of
6 the agreements.

7 Q. How do you know he is the project engineer?
8 What's your basis of that knowledge?

9 A. I have only been informed of that. Let's
10 see, I believe I have spoken with him by phone once.
11 We have had prior coordination with Mike Van de Vehr
12 (sp). When Mr. Van de Vehr left KCS, I believe at
13 that point I was directed that Mike VanTiem would be
14 the one responsible for those duties.

15 Q. Would it be fair to say that Mr. Van de
16 Vehr's office was located with KCS at their
17 headquarters in Kansas City, Missouri?

18 A. I don't recall exactly where Mr. Van de
19 Vehr's office was located.

20 Q. Are you aware of where KCS headquarters are
21 located?

22 A. I believe it is in Kansas City.

1 Q. Kansas City, Missouri?

2 A. Yes.

3 Q. What was the address of this document that

4 was sent to Mr. VanTiem?

5 A. 4601 Shreveport Blanchard Highway,

6 Shreveport, Louisiana 71107.

7 Q. Was a copy of this sent to anyone with KCS

8 in Kansas City, particularly their contract

9 department or real estate department or legal

10 department?

11 A. No.

12 MR. JEFFERY: No other questions.

13 JUDGE JACKSON: Any objections to the admission

14 of IDOT's Group Exhibit 1?

15 MR. JEFFERY: No.

16 MR. VON DE BUR: No, sir.

17 (Whereupon IDOT Group Exhibit 1

18 was admitted into evidence.)

19 JUDGE JACKSON: All right. Next witness?

20 MR. PARRISH: Okay, we will call --

21 MR. VON DE BUR: Just one question.

22 JUDGE JACKSON: Oh, you have a follow-up,

1 sorry.

2 RECROSS EXAMINATION

3 BY MR. VON DE BUR:

4 Q. Could you outline the project schedule for
5 us, the current project schedule as far as bid
6 letting, the actual construction and completion?

7 A. It is tentatively on an April 24 letting
8 date. Once it is let and awarded, we normally have a
9 pre-construction conference within two weeks to
10 approximately a month after that. The awarded
11 contractor would have some input as to what the
12 actual schedule was determined, but that would also
13 have a resident engineer in construction there at
14 that meeting and a supervisor field engineer. From
15 that point that's where the contract administration
16 would take over where they would work out when the
17 contractor was going to come in, but it is
18 essentially for two construction seasons.

19 Q. Does the bid require the approval of these
20 contracts?

21 A. I am sorry?

22 Q. Does the bid require the approval of your

1 agreements with the Kansas City Southern, the actual
2 bid letting?

3 A. The award would have to -- the project
4 cannot be award to the winning bidder without the
5 agreement with KCS.

6 MR. VON DE BUR: Okay. Thank you.

7 JUDGE JACKSON: Thanks.

8 MR. PARRISH: That's all for this witness.
9 Thank you, Mr. Brown.

10 IDOT will now call Mr. Jim Morris.

11 JAMES MORRIS

12 called as a witness on behalf of the Illinois
13 Department of Transportation, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PARRISH:

17 Q. Mr. Morris, will you state your name for
18 the record, please.

19 A. James Morris.

20 Q. And where do you work and what is your job
21 title?

22 A. I work for the Department of Transportation

1 in Springfield, Illinois.

2 Q. And what is your educational background,
3 and please include any professional degrees you hold?

4 A. I forgot to say my job title. It is
5 Project Support Engineer, also. But, yeah, my
6 education, I graduated from the U of I in '74 with a
7 BS in agricultural engineering, and I am currently a
8 registered professional engineer in Illinois.

9 Q. What are your job responsibilities,
10 Mr. Morris?

11 A. Currently, I coordinate agreements between
12 IDOT and the various railroads that operate in
13 Illinois. Previous I had worked at the Bureau of
14 Local Roads in a similar manner, and I also dealt
15 with agreements with local agencies and utilities.
16 But currently I work with construction projects
17 dealing with railroads.

18 Q. Are you familiar with the petition as filed
19 by IDOT in this manner?

20 A. Yes.

21 Q. And what is your role in terms of the
22 project described in the petition?

1 A. To get the agreement signed between IDOT
2 and the railroad and also coordinate with our
3 district offices in case, you know, there is other,
4 you know, additional information needed or if they
5 have any questions.

6 Q. Okay. I show you what's been marked,
7 counsel, Exhibit 2.

8 (Whereupon IDOT Exhibit 2 was
9 presented for purposes of
10 identification as of this date.)

11 Show you what's been marked as
12 Exhibit 2 to the petition. Do you recognize that
13 document?

14 A. Yes, I do.

15 Q. What is that document?

16 A. That's the agreement that I drafted and
17 sent out to KCS.

18 Q. And when was that agreement sent out to KCS
19 originally?

20 A. Probably -- the transmittal letter was
21 dated August 28. I am assuming it went out on or
22 about that time.

1 Q. That's 2008?

2 A. 2008.

3 Q. Okay. Now, subsequent to sending of that
4 agreement, did you engage in any follow-up to request
5 what the status regarding the agreement was?

6 A. Yes. Initially I tried to find out who I
7 should send this to. I had contacted our district
8 and Mr. Von De Bur because I understood there was,
9 you know, some personnel changes. So I even made a
10 phone call to Mr. VanTiem to make sure I should send
11 that to him. I didn't make any notations on our
12 file, but I did have a phone conversation with him.
13 And so I drafted the agreement and then sent it to
14 Mr. VanTiem.

15 Q. And it was your understanding that
16 Mr. VanTiem from Kansas City Southern was the contact
17 that you were dealing with regarding this project?

18 A. Correct. Normally with railroads that we
19 deal with throughout the state, we send it to their
20 public works or public contact engineer. And if
21 there is any legal problems, then they would forward
22 it on to their legal people.

1 Q. Very good. May I have that back, please?

2 A. Oh, sure.

3 Q. I show you what's been marked as Group
4 Exhibit 3, counsel, that is associated with our
5 petition, e-mails.

6 (Whereupon IDOT Group Exhibit 3
7 was presented for purposes of
8 identification as of this date.)

9 And do you recognize the documents in
10 Group Exhibit 3?

11 A. Yes.

12 Q. And what are those documents?

13 A. They are e-mails that I sent to Mr. VanTiem
14 about the status of the agreement. I was just
15 checking with him, understanding that the railroad
16 has a busy schedule and, you know, if they had a
17 chance to look it over and if they were going to sign
18 it.

19 Q. And would you for the court state the dates
20 of the e-mails that you sent to Mr. VanTiem?

21 A. The e-mail to Mr. VanTiem was dated
22 Thursday, October 2, 2008, which was a little over a

1 month after the agreement was sent out.

2 Q. And what in substance does that e-mail say?

3 A. It says, "I left a phone message with you
4 about the status of our agreement with you. And I am
5 assuming KCS has no problem. It is just a matter of
6 time before KCS will sign it."

7 Q. And will you go to the next document in the
8 group exhibit?

9 A. Sure.

10 Q. And what is -- who is that e-mail to?

11 A. There is an e-mail to David Reeves. I had
12 contacted Joe Von De Bur again to see if, you know,
13 he knew of anyone that I should get in contact in the
14 workings of the railroad. So I told Mr. Reeves that
15 I had sent them to Mike VanTiem, and I was wondering
16 if he could find out the status of that agreement
17 within the company and if he could, you know,
18 expedite it to get it signed.

19 Q. Did you ever receive a response to that
20 particular e-mail?

21 A. No, I did not.

22 Q. Did you ever receive a response to the

1 first e-mail that you sent?

2 A. No.

3 Q. The next document in Group Exhibit 3, to
4 whom is it addressed?

5 A. To David Reeves.

6 Q. And what date does it carry?

7 A. That was dated Thursday, October 7, also.
8 Just later in the day.

9 Q. Okay. So two e-mails that same particular
10 day. Did you ever receive a response to that e-mail?

11 A. He did ask -- because we have the two
12 projects, besides Illinois 111 we are building
13 Illinois 255, and I was explaining the difference
14 between the two projects and, you know, that we
15 needed the 111 agreement signed as opposed to the 255
16 which needed to be signed but it wasn't as urgent.

17 Q. Okay. The next document in Group Exhibit
18 3?

19 A. Okay, this is a response -- well, that was
20 David's question about the -- I guess sort of like in
21 reverse order. He asked me what was the project
22 about, and then my response was, you know, the

1 explanation to him that there were two different
2 ones. And those were both dated October 2.

3 Q. Okay. The next page in Group Exhibit 3, to
4 whom is it addressed and from whom is it sent?

5 A. To David Reeves. It says, "Attached is the
6 agreement and estimate. I did not send our ethical
7 statement or the two plan sheets. Thank you for your
8 assistance."

9 Q. Okay. The next document?

10 A. It was to David Reeves dated October 17.
11 "Was wondering if you were able to track down the
12 agreement. Let me know what's going on. Thanks."

13 Q. And did you ever receive a response to that
14 e-mail?

15 A. No.

16 Q. And finally the last page, to whom is it
17 addressed?

18 A. To David Reeves from myself. "I left you a
19 voice mail. Do you know where the agreement is in
20 the KCS pipeline?"

21 Q. And what is the date?

22 A. That was dated October 27, all of 2008.

1 Q. Did you ever receive a response from the
2 e-mail request that you made? From the time of the
3 e-mails until the filing of this petition had anyone
4 called you?

5 A. No.

6 Q. And you never received a response?

7 A. No.

8 Q. Is it your recommendation that the
9 Commission require the Respondent Kansas City
10 Southern Railroad to execute and comply with the
11 terms and conditions of the agreement as part of the
12 Commission's overall approval of this project?

13 A. Yes.

14 MR. PARRISH: I have no further questions.

15 JUDGE JACKSON: Mr. Jeffery?

16 MR. JEFFERY: I have no questions.

17 JUDGE JACKSON: Mr. Von De Bur?

18 MR. VON DE BUR: I have no questions. No
19 questions, Your Honor.

20 JUDGE JACKSON: Okay. Any objections to the
21 admission of IDOT Exhibit Number 2, the agreement, or
22 Group Exhibit Number 3, the e-mails?

1 MR. PARRISH: No, Your Honor.

2 (Whereupon IDOT Exhibit 2 and

3 IDOT Group Exhibit 3 were

4 admitted into evidence.)

5 MR. PARRISH: We have no further witnesses to

6 produce.

7 JUDGE JACKSON: Mr. Jeffery, any witnesses?

8 MR. JEFFERY: No, sir.

9 JUDGE JACKSON: Okay. Mr. Von De Bur?

10 MR. VON DE BUR: No, sir.

11 JUDGE JACKSON: Staff want to say anything for

12 the record? I would imagine Staff supports the

13 petition.

14 MR. VON DE BUR: Yes, Staff does support the

15 petition. Based on what we have reviewed so far, it

16 looks to us as if the improvements at Route 111 will

17 improve the safety at that particular crossing. I am

18 not sure what the traffic increase might consist of,

19 but just based on what we have seen so far, we have

20 no objection to the petition.

21 We would like to point out that Kansas

22 City Southern would need to submit Form 3s with plans

1 for the signal work at Route 111 for our approval.

2 That's all I have.

3 JUDGE JACKSON: Okay. This morning the
4 Commission pretty much gave everyone a little bit
5 more time. They cancelled the bench session for --
6 the first one in April. I think this is going to be
7 fine. I don't think we need a formal order. But I
8 tell you what, we will go to formal order if you guys
9 don't get back to me say, oh, the first of April. Is
10 that reasonable for the railroad?

11 MR. JEFFERY: Uh-huh, I would think so.

12 JUDGE JACKSON: I think it was April 6 the
13 bench was cancelled. So the first bench that we
14 could get anything on would be the 22nd, somewhere in
15 there.

16 MR. PARRISH: That's April?

17 JUDGE JACKSON: Yeah, yeah. And I have to have
18 everything done two weeks before bench. So work at
19 it, keep going. Let me know. File something by
20 April 1. Let me know where you guys are. If
21 everything is signed, taken care of, I will just do a
22 little two-page deal dismissing it as moot, okay. So

1 that's where we will go.

2 MR. VON DE BUR: If I may, Your Honor.

3 JUDGE JACKSON: But we have the testimony if we
4 need to go to full order.

5 Yes.

6 MR. VON DE BUR: Just real briefly, it appears
7 to me that the real problem here is a communication
8 problem and knowing who to contact and how to contact
9 them.

10 JUDGE JACKSON: Right, right, Louisiana,
11 Mr. VanTiem.

12 MR. VON DE BUR: If the Kansas City Southern
13 could possibly provide a list of contacts for
14 projects like this, I think it would be tremendously
15 helpful in the future to any similar projects. I
16 note Illinois Route 255 is a very large project that
17 not just encompasses this particular docket. But if
18 the Kansas City Southern could provide such a list,
19 it would certainly be helpful to all the parties
20 here.

21 JUDGE JACKSON: It sounds like there was some
22 response from Mr. Reeves, general counsel, but, you

1 know, Lord knows, he probably has a ton of stuff. So
2 why don't you guys get together afterwards and see
3 if --

4 MR. JEFFERY: What we can probably do in the
5 interim is just direct any communication with me and
6 I will make sure that there is action taken on it.

7 JUDGE JACKSON: That would be good. All right.

8 MR. MORRIS: So where should future agreements
9 be sent?

10 MR. JEFFERY: In the short term send everything
11 to me until we can give you a list with --

12 MR. MORRIS: Of contacts.

13 MR. JEFFERY: Exactly.

14 JUDGE JACKSON: I would much rather do a
15 two-page dismissed as moot order, rather than a
16 six-page, whatever it would be, full order. So go at
17 it.

18 And any objection to marking the
19 record heard and taken?

20 MR. PARRISH: None.

21 JUDGE JACKSON: Okay. Heard and taken.

22 HEARD AND TAKEN